

SEP 16 1988

WASTE CONFIDENCE REF MATERIAL

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MEMORANDUM FOR: Frank P. Gillespie, Director  
Program Management, Policy Development and  
Analysis Staff  
Office of Nuclear Reactor Regulation

Denwood F. Ross, Deputy Director  
Division of Reactor Accident Analysis  
Office of Nuclear Regulatory Research

Martin G. Malsch, Deputy General Counsel for  
Licensing and Regulation  
Office of the General Counsel

Karen D. Cyr, Attorney  
Rulemaking and Fuelcycle Division  
Office of General Counsel

Jared S. Wermiel, Section Chief  
Plant Systems Branch  
Division of Engineering and Systems Technology  
Office of Nuclear Reactor Regulation

Robert A. Kornasiewicz, Senior Project Manager  
Waste Management Branch  
Office of Nuclear Regulatory Research

FROM: Robert M. Bernero, Deputy Director  
Office of Nuclear Material Safety and Safeguards

SUBJECT: DOCUMENTS RELATED TO WASTE CONFIDENCE PROCEEDING

Please find enclosed the following documents which you may find useful in preparing for the initial meeting of the review group to review the Commission's 1984 Waste Confidence Proceeding's findings:

- (1) General chronology of the Waste Confidence Decision;
- (2) Briefing materials provided to the Commission in preparation for oral presentations to the Commission by participants to the Waste Confidence proceeding on January 11, 1982;
- (3) December 21, 1981 Consolidated Statement of State Group;

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- (4) December 22, 1981 Prehearing Statement of DOE;
- (5) May 16, 1983 Draft Waste Confidence Decision;
- (6) May 16, 1983 proposed amendments to Parts 50 and 51;
- (7) June-July 1983 comments on proposed rulemaking;
- (8) October 31, 1983 FRN reopening comment period on fourth finding in Waste Confidence Decision and on associated proposed amendments to Parts 50 and 51;
- (9) August 22, 1984 Final Waste Confidence Decision and Final Amendments to Parts 50 and 51.

In addition to the above documents, we have requested SECY to assist us in acquiring other records related to the Commission's 1984 decision.

(Signed) Robert M. Bernero

Robert M. Bernero, Deputy Director  
Office of Nuclear Material Safety  
and Safeguards

Enclosures:

As stated

WITHOUT ENCLOSURES

R. Browning, HLWM  
R. MacDougall, HLSE  
HLSE r/f

J. Linehan, HLOB  
NMSS r/f  
J. Bunting, HLSE

J. Corrado, HLSE  
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Central Files w/encl.

(\*see previous concurrence)

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DATE: 88/09/	:88/09/	:88/09/	:88/09/	:88/09/16	:	:

~~RESTRICTED INFORMATION~~

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MEMORANDUM FOR: To Distribution  
FROM: Robert M. Bernero, Deputy Director  
Office of Nuclear Material Safety and Safeguards  
SUBJECT: DOCUMENTS RELATED TO WASTE CONFIDENCE PROCEEDING  
DATE:

OFC: HLSE *Paul* : HLSE *RCB* : HLSE *RCB* / HLWM : NMSS : :  
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## CHRONOLOGY OF WASTE CONFIDENCE PROCEEDING

- November 5, 1976 - Vermont Yankee Nuclear Power Corporation applied to NRC for amendment to its operating license to permit expansion of spent fuel pool capacity. New England Coalition on Nuclear Pollution intervened.
- November 8, 1976 - Natural Resources Defense Council (NRDC) petitioned NRC (1) for rulemaking to determine "whether radioactive wastes can be generated in nuclear power reactors and subsequently disposed of without undue risk to the public health and safety", and (2) to refrain from acting finally to grant pending or future requests for operating licenses until such time as this definitive finding of safety can be and is made.
- November 24, 1976 - Northern States Power Company requested license amendment to permit expansion of spent fuel pool capacity at the Prairie Island facility. Minnesota Pollution Control Agency intervened.
- (date tbd) -NRC staff evaluated the safety of the proposed spent fuel pool modifications and their environmental impacts on the Vermont Yankee and Prairie Island requests. Staff found "reasonable assurance" that modifications would not endanger public health and safety, satisfied AEA and NRC regulations, and did not require preparation of an EIS. The NRC staff did not consider any implications arising from the possibility that the unavailability of a permanent nuclear waste disposal solution might cause the plant sites to become permanent storage facilities, or to continue on as storage beyond the expiration dates of the licensees' operating authority (for Vermont Yankee and Prairie Island, during the years 2007-2009).
- June 27, 1977 -NRC denied NRDC Petition for Rulemaking.
- August 12, 1977 -ASLBP approved the expansion of the spent fuel storage pool for Prairie Island.
- August 30, 1977 -ASLBP approved the expansion of the spent fuel storage pool for Vermont Yankee.
- (dates tbd) -New England Coalition on Nuclear Pollution and the Minnesota Pollution Control Agency appealed the Licensing Board decision.
- January 30, 1978 -Appeal Board consolidated the appeals and affirmed the

staff's and the Licensing Board's safety and environmental conclusions. The Appeal Board then addressed the issue raised by the intervenors that reactor sites might become long-term or indefinite storage sites for nuclear waste, and that before it could grant requests for expansion of spent fuel storage capacity on-site, the Commission should first consider the safety and environmental implications of indefinite storage on-site after decommissioning. The Appeal Board ruled that the issue had already been decided in a previous Commission decision denying the NRDC petition. In denying that petition, the Commission had stated that it had "reasonable confidence that wastes can and will in due course be disposed of safely." Although the Commission's decision was not part of a rulemaking or adjudicatory proceeding, the Appeal Board accepted the ruling as a policy decision. Commissioner Bradford criticized the Board's finding because the NRC's conclusion in the denial of rulemaking "was not based on or tested by any evidentiary hearing."

(date tbd)

-Intervenors on the spent fuel pool expansion license amendments appealed.

May 23, 1979

-U.S. Court of Appeals for the D.C. Circuit declined to stay the Vermont Yankee and Prairie Island license amendments, but remanded to NRC for further consideration "whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-09, the expiration of the plants' operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates" in either an adjudicatory or informal proceeding.

October 25, 1979

-NRC published a Notice of Proposed Rulemaking to "reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely disposed of." NRC stated that the rulemaking was in response to the remand by the Appeals Court, and was a continuation of the proceeding leading to the 6-27-77 denial of the NRDC petition.

This notice stated that if the Commission finds that safe disposal off-site would be available prior to the expiration of facility licenses, NRC would promulgate a rule providing that environmental and safety implications of continued on-site storage after termination of reactor operating licenses need not be considered in individual licensing proceedings.

This notice also described the "hybrid rulemaking procedures" the Commission would employ to conduct the rulemaking and how members of the public could participate.

- February 4, 1980 -NRC issued its first prehearing Conference Order in the matter of the "Proposed Rulemaking on Storage and Disposal of Nuclear Waste (Waste Confidence Rulemaking)." The Order noted that participants to the proceeding would "have the benefit of a Statement of Position by DOE at an early date, which should enable them to focus their statements on significant facts and conclusions. DOE is without question the lead federal agency on waste management, which has produced a substantial data base and extensive studies and analyses of these complex issues."
- April 15, 1980 -DOE issued its Statement of Position.
- May 28, 1980 -By Order, the Commission stated that it had directed the Office of Policy Evaluation (OPE) to form a working group, made up of personnel from OPE, OGC, and ELD, and provided with technical support from NMSS, RES, and Standards Development, to advise the Commission regarding the adequacy of the record to be compiled in this proceeding.
- June 9, 1980 -Date for submittal of Statements of Position by participants to the proceeding.
- August 11, 1980 -Date for submittal of Cross-Statements of Position discussing statements filed by other participants.
- January 29, 1981 -NRC working group filed its report.
- February 20, 1981 -NRC issued order denying a motion filed by the Environmental Coalition on Nuclear Power and others to include in the Waste Confidence rulemaking proceeding a full consideration of the disposition and storage of high-level radioactive wastes and damaged fuel generated by the TMI-2 accident, or generated in the course of cleanup of TMI-2.
- November 9, 1981 -By Order, NRC indicated that the next phase of the proceeding would provide for oral presentations to the Commission. The participants were consolidated.
- January 11, 1982 -Oral presentations to Commission.
- May 16, 1983 -NRC issued a draft decision on the proceeding which included the following 5 findings and the rationale for these findings:

(1) The Commission finds reasonable assurance that safe disposal of high-level radioactive waste and spent fuel in a mined geologic repository is technically feasible.

(2) The Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007-2009, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license, to dispose of existing commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(3) The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level radioactive waste and spent fuel.

(4) The Commission finds reasonable assurance that, if necessary, spent fuel can be stored safely and without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either on-site or off-site independent spent fuel storage installations.

(5) The Commission finds reasonable assurance that safe independent on-site or off-site spent fuel storage will be made available if such storage capacity is needed.

The draft decision noted the importance of the passage of the Nuclear Waste Policy Act of 1982 in reaching the above findings. The Commission requested comments on; (1) the implications of the NWPA for the Commission's decision, and (2) the fact that the Commission's discussion of the safety of dry storage of spent nuclear fuel relied substantially on material not in the record of the proceeding.

Separate views were provided by Chairman Palladino, Commissioner Asselstine, Commissioner Gilinsky, and Commissioner Ahearne.

Chairman Palladino noted that the NWPA was most significant with respect to the Commission's finding on the timing of availability of a repository.

Commissioner Asselstine added his views on the need for comment on the fourth finding with respect to dry storage, because it relied on material not in the record.

Commissioner Gilinsky noted that "one cannot count on such storage facilities being available by the years 2007-2009."

Commissioner Ahearne stated that "commenters should know that the major factor in the Commission's finding is the NWPA" and that "in the absence of the passage of [the NWPA], the Commission could not have found confidence."

The draft decision indicated that the Commission would revisit the findings "should significant and pertinent unexpected events occur, or at least every 5 years until a repository for high-level radioactive waste and spent fuel is available."

May 16, 1983

-NRC published proposed rules for Parts 50 and 51. Part 50 was to be amended to establish requirements that the licensee shall no later than 5 years prior to the expiration of a reactor operating license submit plans for NRC review and approval of the actions which licensee proposes for management of all irradiated fuel at the reactor upon expiration of its operating license.

Part 51 was to be amended such that environmental and safety implications of reactor operating licenses need not be considered in Commission proceedings related to issuance or amendment of a reactor operating license. This proposed amendment relies on the Commission's generic determination in the Waste Confidence proceeding that the licensed storage of spent fuel for 30 years beyond the reactor operating license expiration either at or away from the reactor site is feasible, safe, and would not result in a significant impact on the environment, and that there is reasonable assurance that adequate disposal facilities will become available during this 30-year period.

(The Proposed Part 51 Rulemaking does not seem to rely on the availability of a repository in the 2007-2009 timeframe. Nevertheless, the Proposed Rule itself cited the second finding including the 2007-2009 availability of a repository.)

October 31, 1983

-NRC reopened the comment period on the fourth finding and on the associated proposed amendment to Part 51.

August 31, 1984

-NRC issued the Final Waste Confidence Decision and the Final Amendments to Parts 50 and 51. The Commission repeated its commitment to revisit the findings every 5 years or should significant and pertinent unexpected events occur until a repository is available.

August 31, 1989

-Date by which, according to the 1984 Waste Confidence

Decision, the Commission was to have reviewed its conclusions on waste confidence.